

# Principles of Contract Law Underlying Business Activities in the Globalization Era

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**Abstract**—This paper analyzes the principles of business contracts in the era of globalization in Indonesia. Normative law is used in designing the study in this paper. The results show that the principles of contract law are the foundation for the conduct of business activities in Indonesia. The principle of contract law is regulated in the Indonesian Civil Code and continuously existed and developed in the world of transactions in the era of globalization of the free market. Essential and generally applicable contractual principles for every business contract in this era of globalization are freedom of contract, agreement of the parties, agreements that bind the parties with good ethics. Contract law plays a vital and strategic role in business activities, both in starting a business relationship, maintaining the implementation of business transactions and in resolving business disputes. Therefore, contracts/agreements are the main framework used as a basis for determining relationships for economic actors.

**Keywords**—legal principles; contract law; business activity; globalization era

## I. INTRODUCTION

In the last two decades, people's life and behavior tends to change. It caused by various factors and due to various needs, such as globalization of economic, communication and information and market needs.

The shift and change themselves are essentially simultaneous, which almost cover all aspects of life including economic life. In this matter, science and technology are also always advancing by providing renewal and change to people and society. Updates provided by science and technology that greatly affect the pattern of life in the community, including life in the business community.

Changes in the pattern of life in the community either directly or indirectly will also affect the values that are considered true, fair and unfair, appropriate and inappropriate. The development of science, knowledge and technology has made the world closer. The influence of globalization, transportation and communication, has given a different color to the state of the past. The future look into the twentieth century although it is still difficult to project in detail, but it can already be described for the first twenty years. It is not difficult to guess what will happen in those days. Especially the community order will change a lot, especially if it is followed

by developments in the world's major economies, such as North America, European Economic Community, Asia Pacific and so on. Positive and Negative come with uncertainty. This projection is not a baseless prediction, but a projection of anticipation [1].

When examined the real cause of this economic downturn is has violated the rule of law by arbitrarily due to greed which is used as a reference act of market actors who often double positions as rulers, or holding the apparatus as a partner. The provisions of legislation on which economic activity is based are ignored without hesitation, and even more woefully law enforcement efforts in this country still in the stage of preliminary. This condition is further exacerbated due to the understanding that accuracy diverges, that the legislation created by the authorities is more regulatory which is almost pitched and not aimed at facilitating the market to grow naturally. The emergence of the assumption that the country is optimally possible to intervene in every line of business activity, it really will only stoke the market more, and in turn the economic order becomes no longer good.

The thing needs to be underlined, due to business activity in the market is a blessing and inspired of the will of the parties that are fighting the deal until there is agreement and because the relation is framed in contract ties. This means any business activity anytime and anywhere, will always be based on the agreement [2].

Framing The Business with a legal framework that of course this part became Lawyer's claim. This implies that agreements made by the parties in business activities are the law of which the main source. While the duty of the ruler should only provide signs of legislation which is facilitating for the market to grow more conducive. Similarly, the judicial apparatus, should act in favor of the smoothness of transactions and seek to help remove obstacles, instead of making it hard to find something that is actually easy. On the other hand Lawyer or other legal practitioners, a challenge to be able to provide juridical container and security for business activities which is increasingly complicated through the techniques of contracting, so that their professionalism is ready to be at stake. In turn academics where law-enlisted partisans are tasked to produce juridical graduates who excel and think professional especially in the era of increasingly fierce competition due to the rapid flow of globalization.

As it is known that the agreement is the basis for business activities, the main rule is in the Indonesian Civil Code (Burgerlijk Wetboek = BW) book III, relics of the Dutch colonist because it has not been able to make a replacement. If it is listened carefully, in fact the rule of law is mostly very strongly colored by economic aspects, and this has always been recognized and never faded. Even for the present and future such aspects will remain dominant [2]. Nevertheless, the future will still need a more thorough and in-depth assessment of the role and possibilities of the development of the principles of contract law in order to serve as a foundation that provides space for business activities that increasingly fierce competition in the era of globalization, to accelerate the growth and better life of the economy.

From the description above, then the formulations of the problem that become the subject of the study/discussion in this research are:

- What is the role of Contract Law principles in business activities in Indonesia?
- How the implementation of the principles of Contract Law in the regulation of business activities in Indonesia?
- What is the perspective of Contract Law principles that underlies business activity in Indonesia in the era of globalization and free market?

## II. METHOD

This study belongs to a normative law research whose character is with the character and traditions of law; normative research is a hallmark and tradition of law. Thus, I used descriptive content analysis to analyze the law on business contract in Indonesia to examine the notion of its existence within national and international business competition amid the era of globalization. Legal material and related literature to national and international business and their contract law were used as an accurate guidance in obtaining the object of the study.

## III. RESULT AND DISCUSSION

Indonesia as a State of Law (Rechtsstaat) it is fitting that all activities of its citizens are not exempt from business activities subject to or regulated by law. Business activity is an activity that streamlines time and capital in order to gain profit. Equivalent to this understanding is the term of running a company which is an activity that must meet the requirements: 1) that such activity shall be carried out continuously in an uninterrupted sense; 2) such activities are carried out openly in a legal sense; 3) that the activity is undertaken in order to gain profit both for oneself and for others [1].

Therefore, Business Law can be construed as any legal instrument (Law or other Regulation) which regulates every activity of running a company [1]. Thus, business law is any legal regulatory tool of economic actors / parties that run the company.

In fact, the activity of running a company is a very complex and uninterrupted circuit, thus Business Law should be able to

always provide the various set of rules required by the activities in the community which are constantly evolving and growing. Thus the business must always be able to provide solutions in case of various problems related to business activities in general.

In business activities, the contract has a very important role that is to secure the transaction. It is undeniable that the business relationship starts from the contract. The absence of a contract, no business relationship is possible [3].

The contract or agreement is the basic framework used as the frame of business relations of economic actors, so that the certainty of the rights and obligations of the parties becomes clear and detailed. For a treaty to be valid, as stipulated in article 1320 BW, must meet 4 (four) kinds of requirements namely:

- Agreed between contractors (Articles 1321-1328 BW).
- The parties are capable of doing legal actions (Articles 1329- 1331 BW).
- The nature and extent of the object of the agreement can be determined (Articles 1332- 1334 BW).
- Causes are lawful or permissible (Articles 1335-1337 BW).

To be able to execute the agreement/contract well then there are some legal norms underlying that is called the principles of law. The principle of law is not the rule of concrete law, but is the basic and general mind or is the background of concrete rules which lies within and behind every legal system incarnate in the legislation and judgment which is a positive law and can be argued by looking for common traits in these concrete rules. The function of legal science is to seek this legal principle in positive law [4].

The law of contract (contract law) contained in book III BW, with its open system of law which provides for the parties to enter into an agreement to determine the contents of the agreement with a common restriction that is not contrary to the law of decency and public order. This legal system (law of covenant) is based on three pillars of legal principle as a buffer that is the principle of consensualism law, the principle of freedom of contract and the principle of binding strength of the agreement. While the principle of good faith as a legal foundation as a whole also has a role that is not small in the field of contract law [2].

The principle of freedom of contract which became one buffer of contract law as stated in Article 1338 BW, is a very conducive runway to facilitate the pace of business activity. How contract makers are given the discretion of pouring their will according to the goal to be achieved without much shackles that hinder it, so that the desired type of business ties can be contained. Indeed this freedom is not without limit, its ramble is the origin of the contract which is made not contrary to public order, legislation and propriety.

The principle of freedom of contract gives an opportunity to the party (contractor) to contain certain clauses to fulfill their interests, but not infrequently it is exploited by parties who are stronger in position to suppress weaker opponents especially in

standard contracts. This is where it is demanded the expertise of contract design as well as the role of Lawyer, other practical judges of the law will be professionalism.

In connection with Article 1338 BW known as the basic provision of the existence of the principle of freedom of contract, in paragraph (3) is proved unable to escape by the principle of good faith, although it is only radically stated that agreements should be carried out in good faith. Nevertheless, practice shows a precise development that good faith should be perceived as animating the whole of the process of the agreement, not only in execution, but also at the time of the agreement and at the conclusion of the agreement [2]. The principle of freedom of contract and the factual principle of *sunt servanda* are above as important as the existence of customary law, which binds society as an instrument to regulate the order in business activities so that the function of contract law creates the business order in society [5].

To realize a better and worthy balance of a contract of business by the parties based on the principle of freedom of contract, immediately the principle of consensualism with a straightforward and worth accompanying the process of the agreement.

To avoid the existence of various legal issues related to business activities/transactions especially in the era of globalization and free market, then it is necessary to re-actualize the principles of contract law in order to achieve a better and proper transactions. Therefore, in the era of modern trade marked by the usual use of standard contracts (adhesion agreements), then it is natural that the legal community thinks to optimize the standard contract to accommodate the balance of contractual rights and obligations. For this purpose, the principle of freedom of contract to be a transactional matrix requires the development of empowerment of other legal principles of agreement in order to be in line or with certain conditions. Its tasks are among others the framework of the judge's efforts in developing the legal principles contained in the book of law (KUH). Civil Code (BW) considering that the Law is originally created to remain as it is, while the community served continues to fluctuate with bringing with various problems [6]. So it demands the sharpness of the judges' reasoning as well as realizing a fair and definitive dispute resolution [4].

In regard to the open nature of the Law of Contract, knowing, understanding and implementing the principles or principles of contract law/contract law in the era of globalization of Indonesia, among others, can be examined from the system approach. From the above, description can be said that the system is a collection of integrated principles that support a law building that is nurturing sustainability, harmony, no overlap and legal certainty. In this regard, civil law is a sub-system of national law. The Indonesian nation has agreed that the principle of the national legal system is Pancasila (the philosophical principle of the Republic of Indonesia), the 1945 Constitution of the State of the Republic of Indonesia, the constitutional principle and the national development plan program (as the operational basis). In positive law such as the Civil Code and the Commercial Code there are a number of

general, concrete principles whose traits are the elaboration of abstract principles.

National civil law symposium in 1981 has formulated a number of principles of Commercial Law, especially in the law of agreement, among others: 1) the principle of consensualism; 2) the principle of freedom of contract; 3) the principle of agreement has a binding force as law; 4) the principle of the agreement shall not be contrary to the law of morals and public order; 5) the principle of protection against the weak; 6) good ethical principles; 7) principles regarding the terms of the validity of the agreement; 8) the principle of equilibrium; 9) the principle of trust; 10) the principle of equality of law; 11) the principle of legal certainty; 12) moral principles; 13) the propriety principle; and 14) the principles of public interest and public order [7].

These legal principles are also the principles of economic law that are used for business people in the era of globalization [8]. In addition to the above legal principles in business activities in the era of globalization also pay attention to ethics in business is a value that is considered fair and unfair, the value that is considered true and not true, and the value that is considered ethical or unethical [1]. Specifically for legal instruments deemed capable of meeting legal needs in the field of business economic activity must meet the principle of balance, the principle of public supervision and the principle of state intervention on economic activity.

Completing the principles of contractual law existing in the BW, for the judge/judiciary to apply/intervene in terms of giving the cancellation of the agreement more actively and wisely by adopting the *Misbruik Van Omstandigheden* (abuse of circumstances) or the doctrine of Unconscionable ability to be used by the judge to supplement the Indonesian legal system so as to disregard the execution of treaties whose conditions are made unfairly and arbitrarily [2]. This is very possible with regard to our legal system of covenant (book III BW) which embraces an open system.

The participation of Indonesia to join the World Trade Organization (WTO) or General Agreement on Tariffs and Trade (GATT) and based on the Bogor Declaration, not only allows opportunities for Indonesia to enter the world of international trade markets for Indonesia but also required to provide an adequate legal framework for international trade transactions. In this case, the principles respect and benefit each other underlying GATT, WTO, APEC and APTA agreements [9]. It is urgent to be adopted into the legal system of contracts, so contractors, both national and international contractors, have confidence in the existence of legal certainty and fairness in the business activities undertaken.

It was Jeremy Bentham who first revealed the theory of justice (doctrine utility) in the law. According to this doctrine the law should give as much happiness to most people [10]. Bentham's statement can be understood that this law is provided to regulate the transactions of people's lives in order to walk peacefully. In this case it needs to be a balanced arrangement between individual interests and the interests of society. If this principle is applied in business activities especially in the field of patent besides the individual interests in this case the patent

holder, it should also be useful for the wider community, particularly in the spread of patent (technology) [11].

Of course there are still other legal principles of contract, particularly those which are linked with international trade and the principle of sustainable development which can be used in business activities performance that require more in-depth research and assessment.

#### IV. CONCLUSION

Contract law has a vital and strategic role in business activities in Indonesia, whether in starting a business relationship, safeguarding the implementation of business transactions or in settling the business dispute. Therefore, the contract/agreement is the basic framework used as the basis/frame of relationship for economic actors.

The main legal principles of contracting that are the basis of business activities in Indonesia are the principle of freedom of contract, the principle of consensually and the binding principle, such as the Law for its manufacture, essentially set forth in Book III of the Civil Code. In the perspective toward the era of globalization and free market, the principle of contract law will be more extensive and evolve according to the needs of the international business world. Hence, the underlying legal principle is applicable not only for national business contract law but also for contract law in international business transactions.

To avoid the existence of various legal disputes related to business activities, such as those in the era of globalization and free market, it is necessary to re-actualize the principles of contract law to achieve better and fair trade transactions by optimizing the use of standard contracts in business activities.

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